

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

January 4, 2006

In the Matter of
Harry B. and Paula J. Silverman

Docket No. 2003-161
File No. SE3-4059
Barnstable

RECOMMENDED FINAL DECISION

This is an appeal by the Barnstable Conservation Commission of a Superseding Order of Conditions (SOC) issued from the Department's Southeast Regional Office conditioning proposed work under the Wetlands Protection Act. Prior to the issuance of the SOC, the Conservation Commission denied the project under the Barnstable Wetlands Protection Ordinance and the Wetlands Protection Act, and the applicant appealed the denial under the Ordinance to Superior Court.

A motion to stay this proceeding in accordance with Wetlands Policy 89-1 (Appeal Stays: Stay of Requests for Adjudicatory Hearings in Wetlands Permit Cases when an Order of Conditions has been Denied under a Local Wetlands Bylaw) was granted on March 23, 2005. The applicant was ordered to file reports concerning the Superior Court appeal of the project's denial under the Barnstable Ordinance.

On December 16, 2005, the Department's Office of Appeals and Dispute Resolution received a motion to lift the stay filed by the petitioner, requesting that the SOC be vacated and the appeal be dismissed as moot. The Department assented to the motion on December 22, 2005.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

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In its motion the petitioner attaches as Exhibit A the Superior Court judgment entered November 2, 2004 denying the applicants' motion for judgment on the pleadings, and affirming the commission's denial. The applicants appealed the decision of the Superior Court to the Massachusetts Appeals Court. The petitioner also provided with its motion a copy of an Order from the Appeals Court dismissing the applicant's appeal with prejudice entered November 14, 2005 and attached as Exhibit C.

The Commission's denial under the local wetlands ordinance is now final. The project cannot be built as conditioned in the SOC and the applicants cannot comply with Special Conditions numbers 3 and 8 in the SOC. Accordingly, I recommend granting the petitioner's motion, vacating the SOC and dismissing this appeal as moot pursuant to 310 CMR 1.01(5)(a)2.

NOTICE

This decision is a recommended final decision of the Presiding Officer. It has been transmitted to the Commissioner for his final decision in this matter. This decision is therefore not a final decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's final decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended final decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Commissioner Robert W. Golledge, Jr., January 10, 2006.